



PRIMARY RESEARCH

Jurisdiction of digital currency part of the commodity market as bankruptcy assets in the event of bankruptcy under the law in Indonesia

Helmy Tsany Abdillah¹, Daniel Hendrawan^{2*},

^{1,2} Fakultas Hukum, Universitas Kristen Maranatha, Bandung, Indonesia

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Abstract

The study aims to explore the legal framework for the possibility to use digital currency as a guaranteed assets in case of bankruptcy as per Indonesian law. The digital currency is rising at rapid pace all over the world and its time to formulate, amend laws related to firm bankruptcy laws which can use digital currency as guarantee assets. The sale of bankrupt assets (boedel pailit) in the form of digital currency is something that must be done to pay off all forms of debt in the event of bankruptcy. This study uses a normative juridical research method approach, namely by examining legal issues with library materials which include research on legal principles, legal systematics, and legal history along with online published material available in legal reports, books and journals. The content analysis technique was used for data analysis and results revealed several new regulations requirements to adjust this emerging legal need of time. Study provides multiple theoretical and practical implications and future research directions for the scholars, practitioners and policy makers.

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INTRODUCTION

Background of Study

In current era of digitalization, the rapid technological developments are inevitable and necessitates the adoption in every sphere of life. Human needs that continue to increase led to many breakthroughs being made. Technology that was previously only used for communication functions is now starting to develop in a bigger direction, as we can see as a reference in the fields of economy, education, socio-culture, information of course also transportation. It aims to create a more decent human life. The same applies to global economic developments. One of the economic activities such as buying and selling which is usually done traditionally is now starting to shift in a more modern direction. The presence of online buying and selling does not allow the payment system to use cash. It takes a type of payment that is easier, safer, faster, and profitable for both parties. Then non-cash payments emerge, such as using debit to E-Wallet or electronic bags. However, this may still be felt is

not enough. So digital currency was created.

The focus on digital currency development goes hand in hand with a growing community environment, turning more congested due to the use of technology and tools.

Indonesia has established a digital currency which makes digital currency one of the assets that can be traded at the Futures Asset Center. The Commodity Futures Trading Regulatory Agency has made a proposal that led to a decision on digital currencies as part of the commodity market. According to existing research, there are three reasons why digital currency that it can buy and sell as a commodity asset in a futures asset center, namely: because digital currency is a product that is not interfered with by the government, one of which is through subsidies, digital currency is a futures product that is volatile and the last one is that digital currency has a supply and demand system that is quite large. So it can be said as a commodity asset that can be bought and sold at the Futures Asset Center. That digital currency has been confirmed in writing through the regulation of the

*corresponding author: Daniel Hendrawan

†email: daniel.hendrawan@rocketmail.com

head of Bappebti number 5 of 2019 regarding regulations in carrying out buying and selling of crypto assets at a futures asset center, hereinafter referred to as Perba.

This digital currency can be used as a treasure that has economic value if we can see from an economic point of view, that digital currency is attached to the concept of property. In the business world, the currency is said to be a company asset that will one day be very useful as capital or as an asset to be traded to meet its debtors. UUK is expected to be a fast, open, and effective means for debtors to resolve debt problems with creditors. Based on this regulation, a Special Court of Justice (Commercial Court) was created within the scope of the general court whose function was to settle debt cases.

Many people talk about bankruptcy as the same as falling into poverty, in fact, it is different. Bankruptcy itself is an act of general and comprehensive confiscation of the assets belonging to the bankrupt debtor will then be auctioned off then the results of the auction will be distributed to the bankrupt creditor proportionally in order to create peace. If viewed through the legal dictionary, bankruptcy can have the following meanings: the debtor is no longer paying his debts. After the person, at the request of his creditors or at his request by the court, is declared bankrupt, assets will be controlled by Balai Harta Peninggalan as a custodian in the bankruptcy effort to be used by all creditors.

Bankruptcy in making debt settlements will be carried out by taking the company's assets as a bankrupt bank which will ultimately be distributed to creditors to cover their debts. It is also possible for a legal entity in the form of a company to have assets in the form of digital currency. Capital owners who invest a certain amount of money into the company are referred to as shares (Harahap, 2011; Saeed, Khan, Zada, Ullah, et al., 2022). Therefore, Digital currency can be said that assets that do not have the form of objects or only have material rights that can be valued in currency. Judging from the notion of property according to economics itself, it is also a property that can be calculated in currency values to determine the amount of the value of the property. The sale of bankrupt assets (boedel pailit) is something that must be done when bankruptcy takes place to pay off all forms of debt. That's why the author wants to examine whether an intangible object can be used as a bankrupt asset in the event of bankruptcy.

This research aims to address the research problem based on legal framework gap regarding bankruptcy assets (boedel pailit). Therefore, current research attempts to further examine how the position of digital currency in the regulation of bankruptcy assets (boedel palit)? How the firms

policy makers and national legislators can form a unified policy to facilitate inclusiveness of digital currency in business laws

RESEARCH METHODS

The current study adopted the normative juridical method approach along with in-depth literature searching while unit of analysis was secondary data. The detailed characteristics of this research can be termed as descriptive research with analytical means to explore and highlight a legislation. The individual document study technique was adopted by study authors and especially the certain legal documents related to digital currency and bankruptcy were consulted from business law sources. Current research consulted and collected secondary data from various books, reports of legal departments, research thesis related to study constructs, published articles from journals and several law and business related periodicals available in libraries and online. Additionally, this research focused on famous data base of Scopus to perform systematic literature search to access required secondary data. This study used the important keywords such as digital currency, bankruptcy law, solvency, business law, crypto currency legislations. The data time line was framed from last 20 years and obtained sources were further content analyzed to arrange and gather relevant information pointed towards digital currency inclusiveness in business law framework. The study attempted to figure out and highlight the gaps in legal framework which need to be addressed for better inclusiveness of digital currency in national business legal system.

LITERATURE REVIEW

Understanding Money and Digital Currency

In the book *Our Modern Banking and Monetary System*, economist Rollin G. Thomas argues which can be concluded as money is an object used to buy objects or services and pay debts (Abraham, Kumaat, & Mandeij, 2018; Saeed, Khan, Zada, Zada, et al., 2022). The definition of money is etymologically in Indonesian, which is based on the KBBI on its official website stating that money is legal tender according to law issued by Bank Indonesia in the form of paper or metal (Abraham et al., 2018). Even though it can be said that the meaning of the KBBI is the meaning of money in a narrow sense. So that in fact, we can conclude that money or currency itself can be interpreted as a legal tender issued by the central bank which is intended to carry out transactions or as a medium of exchange to meet human needs. One of the phenomena born from the industrial revolution 4.0 is a digital currency. Digital currency can also be called money in

the digital age and has the view of being a means of change regarding payment instruments that are applicable domestically and abroad, are safe and spread throughout the regions.

Digital Currency Cannot Be Used as a Transaction Tool

Digital currency cannot be used as a trading tool because Bank Indonesia (BI) the highest monetary authority in Indonesia has been affirmed since 2017. Every digital currency including Crypto-currency and other types is not or cannot be used as a transaction tool in Indonesia. In Indonesia, the only legal instrument of payment according to Indonesian law is the rupiah. This is stated in UUMU, that it has been determined that the rupiah is the only currency circulating in Indonesia. using digital currency as a means of payment is against the law (Hashimoto, 2021).

Digital Currency as a Tradable Asset

Every payment system service provider (PSJP) such as Visa and Master card that runs its business in Indonesia does not prohibit the use of any digital currency in Indonesia, digital currency is a form of asset that can be traded on the futures exchange. The rules regarding bitcoin trading are contained in the minister of commerce Regulation No. 99 of 2018 regarding regulations in carrying out buying and selling of crypto assets at a futures asset center and Perba Number 5 of 2019 regarding regulations in carrying out buying and selling of crypto assets at a futures asset center, which has been changed by Perba Number 9 of 2019, then the Second changed with Perba Number 2 of 2020 and the Third changed to Perba Regulation Number 3 of 2020. The regulation explains that digital currency is an intangible object that can be traded (Horgan, Collier, Jones, & Shepherd, 2021).

Digital Currency as a Commodity

Digital currency can be traded, but to be able to become a commodity, an item must have economic value and the price must be considered to be accepted by the market (Piazza, 2017). The digital currency itself can be measured by economic value because people can save it and after examining it further people also think that digital currency can be used as a means of investment.

Definition of Bankruptcy

Bankruptcy etymologically comes from bankrupt, Meanwhile, in French, bankruptcy is a payment jam (Situmorang & Soekarso, 1994). Meanwhile, in Indonesia, bankruptcy means falling into poverty. Bankruptcy itself is a condition where the bankrupt debtor is unable to pay his obligations

(debt) and at least there are obligations (debt) that are due (Situmorang & Soekarso, 1994). Regarding this matter has been written in Article 2 paragraph (1) of UUK, which stipulates that "a debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his request or at the request of one or more creditors". In the book of legal words, bankruptcy is defined as a condition of a bankrupt debtor who is unable to pay his debts. After such person at the request of his creditors or at his request by the court is declared bankrupt, the assets will be controlled by the Balai Harta Peninggalan as the custodian in the bankruptcy effort to be utilized by all creditors. According to Kartono (2000), explained about bankruptcy is as follows: "a situation where the assets of the bankrupt debtor are confiscated by the bankrupt creditors in order to pay their debts".

Definition of Debt

Debt is a condition where a person is obliged to pay the amount of money that has been determined at the time of payment. The creditor has the right to get money from the debtor, to fulfill the rights and obligations of the parties (Kagita, Thilakarathne, Gadekallu, Maddikunta, & Singh, 2021).

According to Sjahdeni (2002a), that the debt referred to in the Bankruptcy Act is not every obligation whatsoever from the debtor to the creditor because of an agreement between them, but only to the extent of the obligation, whether the obligation to pay arises because of any agreement or because it is determined by law (eg the obligation to pay taxes stipulated by the tax law) (Khushnud & Qingjie, 2020).

Conditions for Filing Bankruptcy

The requirements for filing bankruptcy are contained in Article 2 Paragraph (1) of UUK, namely: "A debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible is declared bankrupt by a court decision, either at the request of one or more creditors". Based on Article 2 Paragraph (1) of UUK, to go bankrupt debtor must meet the following criteria:

- At least have more than two creditors.
- There are debts that are due.

Definition of Bankrupt Assets

The definition of bankrupt assets has been written in the general provisions of UUK and the BW explained all forms of debtor's property, both movable and immovable objects, already exist or will exist. be a guarantee or liability for all kinds of one's engagement. All assets belonging to the

bankrupt debtor are general confiscation (public attachment, *gerechtelijke beslag*) along with what was obtained during the bankruptcy. This definition is following what is stipulated in Article 21 of UUK, which can be used as bankruptcy assets are all assets belonging to the bankrupt debtor in the event of an ongoing bankruptcy or the final bankruptcy decision which has permanent legal force. It corresponds to Article 1131 of the BW that in essence will bind all forms of objects owned by the debtor, which objects include movable objects or immovable objects, whether the object already exists or will come in the future (Kinata et al., 2016).

The term "bankrupt property" originally in Dutch is called "faillieten boedel", is used in various articles in the provisions UUK (Sjahdeni, 2002b). Assets (boedel) are a company's assets that has been bankrupt. Furthermore, these assets are controlled by the Heritage Treasure Hall. So that the debtor loses power over his property (*persona standi in ludicio*) (Asikin, 2001).

Bankruptcy assets are all assets and assets of a company and cannot be billed to personal assets. Likewise the personal rights of the debtor. Bankruptcy assets are also assets acquired throughout the bankruptcy (Lu, Yang, Shi, & Wang, 2021).

Because of the provisions of Article 21 of UUK, the debtor's assets are not only fixed items but also movable goods such as jewelry, cars, machinery, and buildings. Which includes goods that are under the control of another person to which the debtor's goods still have rights such as debtor goods that are rented by another party or controlled by another person without rights or against the law (Sutedi, 2009).

ANALYSIS

The digital currency is an intangible asset that has been digitized as a bartering tool using the crypto method which serves to provide a sense of security in conducting financial transactions, overseeing the creation of additional units, and checking asset transfers. Digital currency is one of the commodities in the field of digital assets that can be bought and sold on the futures exchange. The reason that the supply and demand are quite large in Indonesia so that it can be made into a commodity category and can be bought and sold on the commodity market (Chen, Li, Reniers, & Yang, 2021).

The use of block chain technology associated with digital currency in Indonesia has been regulated in Perba Number 5 of 2019 concerning Technical Provisions for the Implementation of the Crypto Asset Physical Market on the Futures Exchange. This Perba is an elaboration of the Regula-

tion of Minister of Commerce of the Republic of Indonesia Number 99 of 2018 concerning the General Policy for the Implementation of Crypto Asset Trading. These two regulations can be used as a legal basis for the use of crypto assets as the subject of commodity futures contracts in Indonesia (Amalia, 2019).

Digital currencies that can be traded through commodity futures exchanges in Indonesia must meet various provisions in Article 3 of Perba Number 5 of 2019 which among other things requires that crypto-assets be based on block chain technology or also called distributed ledger technology (Devarapalli & Biswas, 2021).

To date, BI and OJK have not prohibited the use of block chain technology in the financial services sector. BI only prohibits the use of digital currency as legal tender in the territory of Indonesia as regulated in UUMU. BI's legal basis for prohibiting digital currency for payment transactions is also regulated in PBI Number 18/40/PBI/2016 concerning Implementation of Payment Transaction Processing and PBI Number 19/12/PBI/2017 concerning Implementation of Financial Technology (Eboibi, 2021). The ban on the use of digital currency does not automatically mean that BI and OJK also prohibit the use of block chain technology in the financial services industry. OJK Regulation Number 77/POJK. 01/2016 which regulates Fintech-Loans and OJK Regulation Number 37/POJK. 04/2018 which regulates Financial Financing never prohibits the use of blockchain technology. BI Regulation Number 18/40/PBI/2016 which regulates Fintech-Payment also never prohibits the use of block chain technology (Europol, 2020).

The systematic interpretation of debt repayment with collateral is based on Article 1331 of the BW, It is said that all existing and future assets of the debtor, both immovable and movable, serve as collateral for the payment of the debt that has been agreed upon. Article 1332 of the BW states that the debtor's assets are jointly guaranteed for all creditors who give debts to him. Proceeds from the auction of objects belonging to the bankrupt debtor are then divided according to the amount of the receivables, except if there is a strong reason for the receivables to take precedence. In this case, objects that can be used as repayment of general guarantees if they meet the requirements include (Weigel, 2008).

- The object is economical (can be valued in money).
- The property can be transferred to another party.

DISCUSSION

The bankruptcy decision has legal implications for the assets of the bankrupt debtor, if the bankrupt debtor has assets in the form of digital currency, the assets can be desig-

nated as bankrupt assets. If you want to determine digital currency as bankrupt property, you need a study of material law, as stated in Book II of the BW. In Article 499 of the BW, based on legal science, the material can be interpreted as an object and any rights attached to property rights. So to be able to become a treasure there are conditions that must be met, namely human control and economic value. Regarding whether all objects can be used as collateral for debt payments, it depends on what objects are used to guarantee the object. Based on Article 1331 of the BW all existing and future assets of the debtor, both immovable and movable, serve as collateral for the payment of the debt that has been agreed upon. An object of digital currency certainly has an inherent economic value (Fontanilla, 2020).

The digital currency as company assets, related to the bankruptcy process, is an asset that can be used as debt payments. Digital currency is part of the bankruptcy estate, article 1131 of the BW states that: All objects of the debtor, both movable and immovable, whether existing or those that will only exist in the future, are borne for all individual engagements. The word "all" / "all" of the debtor's property means without exception being a liability for all engagements made by the debtor (Anna Georgiadou, 2021). Executing a bankrupt asset which is a virtual asset, especially since the digital currency is controlled by the bankrupt debtor, and how to assess the price of digital currency so as not to harm the owner of the digital currency. In exercising its authority, the curator is prohibited from having an interest with creditors or debtors so as not to cause losses to the parties (Guinchard, 2021). The curator must pay attention to several things in carrying out the sale of the assets of the bankrupt debtor, namely:

- Determine the highest price in the sale of bankrupt assets.
- Make a decision on what bankrupt assets must be sold immediately and / or which assets are stored first so that the value of the goods can increase in the future (Buil-Gil, Miró-Llinares, Moneva, Kemp, & Díaz-Castaño, 2021).

The sale of all bankrupt assets belonging to the bankrupt debtor including digital currency, the Curator must be responsible for the safety of the bankrupt property, because the curator must strive for the safety of the bankrupt property, for example, immediately store documents, money, securities, and other securities (Subhan, 2008).

THEORETICAL IMPLICATIONS OF STUDY

The current research is incremental to invite theoretical discussions related to newly emerging digital currencies all

over the world. This discussion will help to flourish legal theories and bring some legislative solutions for inclusion of digital currency laws in business environment all over the world. Specially, such discussions are rare in Indonesian legal framework and legal structure related to business and corporate governance laws. Hence, current research is an advance to body of knowledge to initiate a debate on emerging social issue of the times.

PRACTICAL IMPLICATIONS OF THE STUDY

The current study is unique and have a practical significance in context of Indonesian legal system. As Indonesian legal authorities has yet to develop a clear framework for inclusiveness of digital currencies and their terms of usage in the national financial system as well as legalities related to this phenomenon are still scarcely discussed. This study brought several key policy insights for law makers, law scholars and business law practitioners by highlighting the legal gaps in the national legislative framework which need to be addressed for a better and uniform legal policy on digital currency related matters in general. Specifically, this research is important for business community and business law practitioners to point their attention towards this emerging phenomenon related to digital currency usage in bankruptcy laws in Indonesia.

CONCLUSION

That the position of digital currency as a bankrupt asset (boedel bankrupt) is possible but it will be very difficult to interpret or conduct an auction. In the case of bankruptcy, the sale of assets or the digital currency auction process must be supervised by an authorized institution. The authorized institution must be able to determine the valuation of the digital currency, which can then be classified as a company's bankruptcy estate. It is also explained in article 1131 of the BW which states: "All objects of the debtor, all existing and future assets of the debtor, both immovable and movable, serve as collateral for the payment of the debt that has been agreed upon, become dependents for all individual engagements". The word "all" / "all" of the debtor's property means without exception being a liability for all engagements made by the debtor. So if the debtor has assets of digital currency, then the currency is part of the bankruptcy estate.

LIMITATIONS AND FUTURE RESEARCH DIRECTIONS

Beside several strengths and contributions this study also has some limitations which need to be addressed in future studies related to this area of research. Firstly, the authentic well published material from top journals of business law is

scarce related to this topic and specially in Indonesian context. Future scholars may look for some comprehensive literature search method by adding databases other than Scopus to have an holistic view of the topic under discussion.

This research has focused on Indonesian setting only while having a comparative analysis of ASEAN countries and with some developed countries can bring useful insights for policy makers and law authorities in regional context.

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